U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

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DATE: DEC 2 1 2012 OFFICE: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as the Texas state program director for Mi Familia Vota (MFV), a non-partisan community organization. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director concluded that the petitioner qualifies as a member of the professions holding an advanced degree. The AAO will revisit this finding further below. The director's sole stated ground for denial was that the petitioner had not established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by

increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on December 29, 2011. The initial submission contained no statement from the petitioner to explain his intended activities in the United States, how those activities will benefit the United States, or why it is in the national interest for him (rather than a qualified United States worker) to perform them. The petitioner did, however, submit four witness letters from individuals who have worked with him in the past.

Ben Monterroso, executive director of MFV, stated:

> Mi Familia Vota (MFV) is the premier national non-profit organization that unites Latino immigrant and allied communities to promote social and economic justice through increased civic participation. Mi Familia Vota develops, coordinates, and implements sophisticated non-partisan field programs and strategies targeting the complex and diverse Latino electorate, including promoting citizenship, increasing voter registration, and increasing voter participation. . . . Mi Familia Vota is currently building civically engaged, active communities in Arizona, California, Texas, Florida, Nevada, and is evaluating the possibility of establishing operations in New Mexico and North Carolina.
>
> . . . I have known [the petitioner] since 2008 as he served as Mi Familia Vota Arizona Interim State Director. Based on my experience with him as my employee, his academic credentials, his expert knowledge of the different Latino communities in the country and their peculiar political cultures, his more than a decade [of] professional experience, and his leadership standing and recognition in the community, I believe it is in our national interest to have [the petitioner] work as a State Director to promote Latino participation in the upcoming elections.
>
> [The petitioner's] expertise as a Master in Social Psychology, his PhD candidacy in cultural anthropologist [*sic*] and his experience as an organizer will help us develop innovative culturally appropriate models to engage the community more effectively to increase participation at substantially higher levels than our current programs provide. We will be able to implement these innovations at a minimum in the five states where we have operations. These are all key states that will have a substantial impact on the 2012 elections.

[redacted] political director of the Service Employees International Union (SEIU) Arizona, stated that she has worked with the petitioner in that organization and in the Valley Interfaith Project of the Industrial Areas Foundation (IAF). [redacted] offered general praise for the petitioner but said little about his specific past achievements or intended future efforts:

> [The petitioner] was instrumental in developing several dozen leaders within churches, schools, labor unions, neighborhood associations, and particularly immigrant rights organizations. I have always been impressed with [the petitioner] and have admired how he is able to translate very complex social theory into action. Throughout his career as an academic, professional organizer, and social psychologist, he has been able to apply his deep understanding of human nature and social processes to promote and encourage civic participation amongst the most diverse populations. He is particularly effective organizing the Latino communities in the United States as he possesses a very sophisticated understanding of their culture and political and faith traditions. Also, because of his social science training,

[the petitioner] is always intentional in developing long-lasting systems and models that can be tested and replicated.

I believe that our country will benefit greatly by having [the petitioner] work as a State Director with Mi Familia Vota; he will apply his knowledge and experience in promoting civic participation within the Latino community and in developing organizing models that will help build a lasting political participation culture.

[redacted], chair of Emerge Arizona, stated:

I have known [the petitioner] since 2003 when he coordinated the Phoenix segment of the Immigrant Worker's Freedom Ride in his capacity as Lead organizer/Cultural researcher and trainer with the Roofers Union.

. . . The Latino community is especially afflicted by a lack of participation in the political process and particularly in public service. It is in the best interest of our nation to engage disenfranchised communities to fully participate. I strongly believe that [the petitioner's] academic and research background as well as his professional experience in civic engagement will have a tremendous prospective benefit to our nation.

As a State Director for *Mi Familia Vota*, [the petitioner] will be able to engage a stubbornly difficult population and encourage them to participate in the upcoming elections. At the same time, he will help develop systems of Latino voter engagement that will serve as models in other areas of our nation where the Latino community is growing.

[redacted] stated that the petitioner's educational background and past experience gave him "the appropriate profile to have a significant impact in educating and promoting civic participation amongst the Latino community."

[redacted], a researcher at the Universidad Autónoma de Baja California, stated:

I have known [the petitioner] since 1996 as we both worked on our graduate programs in Social and Cultural Anthropology at Arizona State University. . . .

In his article "*Defining the US-Mexican Border as Hyper-reality*," [the petitioner] advanced our understanding of border processes that helps interpret actions of Latino immigrants beyond the immediacy of the border line. I have followed [the petitioner's] professional career and have witnessed and marveled at how effectively he has applied his sophisticated anthropological and psycho-social knowledge of Latino cultural groups in the United States to promote active citizenship among these communities. . . .

> Latinos are grossly underrepresented in public offices, have the highest high school dropout rate of any ethnic group, are the most adversely affected by the current economic crisis, are amongst the highest groups suffering incarceration, and have higher than the national average health problems which generates a huge public health cost. None of these circumstances will change until the Latino develop their own political voice and show it at the polling place. The characteristics – such as the socioeconomic indicators of education and income, as well as cultural idiosyncrasies, apathy and a distrust of politics because of experiences in their country of origin – unique to Latinos that affect voting participation are complex. [The petitioner's] cultural knowledge and professional experience will prove an indispensable asset to the United States as he helps develop a model for voting projects targeting ethnic minorities across the country.

The witnesses quoted above expressed confidence in the petitioner's ability to increase political engagement by the Latino community, but they did not say what success, if any, the petitioner has already had in such work. The petitioner has already served as a state director for MFV, but the petitioner provided no documentary evidence (such as statistical materials) to show that the petitioner's work has increased voter engagement by United States citizens in the Latino community.

The petitioner submitted materials about his earlier organizing work, which addressed social issues other than voter participation. Several newspaper articles, for instance, discussed his work with the United Union of Roofers, Waterproofers and Allied Workers. The union activity appears to have been local to the area of Phoenix, Arizona. He received awards from local organizations, but there is no evidence that his work attracted wider notice. More recently, the petitioner was one of 24 members of the Minority Outreach Subcommittee of the 116-member Phoenix 2010 Census Complete Count Committee, formed to encourage participation in the 2010 Census.

Other news articles refer to efforts to strengthen and solidify a pro-Democratic Latino voting bloc. While USCIS will consider these materials insofar as they attest to low voter turnout within the Latino community, the assertion that Latino voters, or any other voting bloc, can change the outcome of an election is beyond what USCIS can consider as a national interest issue. As an instrument of the federal government, USCIS cannot conclude that it is in the national interest to ensure that candidates from a particular party win or lose a given election.

Overall, the petitioner's initial submission conveys the general idea that Latino voter turnout is unacceptably low, and that the petitioner, as an experienced community organizer, intends to address that problem. The initial evidence, however, does not show that the petitioner has had significant previous success in that area. Therefore, it is not evident that projections of future impact rest on more than confident speculation by witnesses who have worked with the petitioner in the past.

On April 3, 2012, the director issued a request for evidence (RFE), instructing the petitioner to submit further documentation to meet the guidelines set forth in *NYSDOT*. The director

acknowledged the evidence that accompanied the petition, but called for evidence to show the wider influence of the petitioner's past work.

The petitioner's response to the notice (mailed May 4, 2012 and received on May 7) included a cover letter in which counsel stated:

> Please accept this submission as a partial response to the RFE you issued on April 3, 2012. Regulations allow for partial responses to RFEs. 8 C.F.R. § 103.2(b)(11).
>
> [The petitioner] will be submitting several more letters of support from political representatives, evidencing his influence on the field of advocacy and organization. Those letters will be submitted within one week.

Counsel, in the passage quoted above, relied on an incomplete and self-serving reading of the regulation at 8 C.F.R. § 103.2(b)(11). The complete regulation reads:

> In response to a request for evidence or a notice of intent to deny, and within the period afforded for a response, the applicant or petitioner may: submit a complete response containing all requested information at any time within the period afforded; submit a partial response and ask for a decision based on the record; or withdraw the benefit request. All requested materials must be submitted together at one time, along with the original USCIS request for evidence or notice of intent to deny. Submission of only some of the requested evidence will be considered a request for a decision on the record.

The complete regulation clearly and unambiguously contradicts counsel's claim that the regulation permits the petitioner to submit a staggered response to an RFE. The regulation does indeed permit a "partial response," but it does not permit the submission of a later supplement to complete that response. Furthermore, the USCIS regulation at 8 C.F.R. § 103.2(b)(8)(iv) states: "Additional time to respond to a request for evidence or notice of intent to deny may not be granted." Here, counsel has effectively sought an impermissible extension, through the untenable claim that the petitioner could submit a "partial response" during the time permitted with a supplement to follow later.

The AAO notes that the petitioner did not submit the supplement "within one week" of the "partial submission." Instead, the petitioner mailed the supplement on June 28, 2012, nearly eight weeks after the initial RFE response. Counsel's cover letter made no reference to this significant delay, let alone offered any explanation for it.

A practitioner engages in frivolous behavior when he or she knows or reasonably should have known that his or her actions lack an arguable basis in law or in fact, or are taken for an improper purpose, such as to harass or to cause unnecessary delay. 8 C.F.R. § 1003.102(j)(1).

The petitioner's timely response to the RFE included a brief in which counsel discussed the overall importance of voting, and the growing importance of Latino voters. Counsel stated:

> The labor certification process . . . is clearly inappropriate here. The national interest demands that an organizer and advocate of [the petitioner's] stature and abilities be allowed to remain in the country. . . . Civil rights activists and advocates, like [the petitioner], do not hold generic public policy positions. Rather, they hold one-of-a-kind jobs where they are required to have extensive knowledge and intimate familiarity with the Latino community's ever-changing social and political sensitivities. The effective candidate for any civil rights advocacy leadership position requires an analyst who, at a minimum, is able to identify and scrutinize the unmeasured political attitudes, cultural norms of Latinos relating to politics, and other background ethnic differences that explain the gaps in the electorate. . . .
>
> [L]abor certification requirements that contemplate "on-the-job training" or "minimum qualifications" have no place in this arena. . . . [The petitioner's] culturally-specific responsibilities simply do not fit within the labor certification process.

Counsel, in effect, argued that it is impossible to specify "minimum qualifications" for the petitioner's intended position, and that therefore labor certification does not and cannot apply to that position. Counsel cited no evidence to support this position; counsel simply declared that the petitioner must receive the waiver because his position lies outside the boundaries of jobs for which labor certification is possible. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Congress, through legislation, decides which classifications of aliens are subject to the labor certification requirement. The petitioner cannot simply declare himself exempt from that requirement, or claim that some jobs are inherently too important to be left to the labor certification process.

With respect to the petitioner's qualifications, counsel stated:

> [The petitioner's] model for civic engagement will be crucial to Latinos electing the next president. . . . [The petitioner's] approach to boost the political incorporation of Latinos is unique because it actually seeks to weave Latinos into the overall civic political life in the United States, and not merely to increase their numbers in the voter registration rolls. His approach . . . succeeds where the standard voter initiative model fails because it promotes the integration of Latino residents in the political life of their communities through the creation of organizing committees within intermediate institutions. . . . This approach is vastly different than the one typically applied by voter advocacy organizations to the general population – initiatives whose main purpose is to increase awareness of the importance of voting, and not necessarily the actual incorporation of constituents into the political status quo. . . .

> The services [the petitioner] will be rendering may be local, but because his directorship will serve as the model for other Mi Familia Vota locations in the Southwest, their impact will be national in scope.

Counsel discussed the petitioner's work with various organizations. With respect specifically to voter participation, counsel noted that the petitioner "was the Mi Familia Vota Interim Director for Arizona" "[d]uring the 2008 electoral season." Counsel stated that the petitioner "directed a statewide get-out-the-vote campaign that targeted more than 88,000 low-propensity Latino voters across the state" and "was instrumental in defeating Prop 200," a proposed constitutional amendment that would have permitted certain predatory lending practices. Counsel conceded that, without polling data, "it is impossible to measure the *specific* effect" of the petitioner's work, but nevertheless counsel contended that the petitioner's methods were "instrumental in defeating" the ballot initiative.

Counsel provided no figures to show how many of the "more than 88,000 low-propensity Latino voters" actually voted, or that their votes changed the outcome of the vote on Proposition 200.[1] Most important, counsel provided no figures to show that the petitioner has, in the past, been more successful than other organizers at registering and mobilizing voters. This unsupported and anecdotal example does not show that the petitioner has had an especially significant impact on the problem of low participation by Latino voters.

The lack of supporting evidence is significant when considering counsel's claim that the petitioner's methods will serve as a "model" to be emulated elsewhere. The petitioner has already served (albeit on an interim basis) as a state director for MFV, and there is no evidence that his work has established a national model. Furthermore, there are other state directors for MFV. Counsel has not explained why it is the petitioner, rather than the other directors, whose work will establish a nationwide model.

The petitioner submitted a photocopied letter from U.S. Representative Ed Pastor, who deemed the petition "deserving of thorough consideration" and praised the petitioner's efforts "encouraging the inclusion of traditionally disenfranchised minority populations."

The petitioner submitted a second copy of "Defining the U.S.-Mexico Border as Hyperreality," an academic journal article submitted previously with the initial filing of the petition. This article, which dates from 2001, discusses various sociological conceptions of the border but has no demonstrated bearing on the petitioner's intended work as a state director for MFV. The petitioner also submitted further evidence that Valle del Sol, a Phoenix-based humanitarian organization, had previously honored the petitioner as a "Latino Advocacy Champion." The petitioner did not establish that this recognition related to voter participation activities.

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[1] According to unofficial results posted on the web site of the Arizona Secretary of State, Proposition 200 received 1,271,717 "No" votes to 860,607 "Yes" votes, an almost 60-40 loss with a difference of 411,110 votes. Source: http://www.azsos.gov/results/2008/general/BM200.htm (printout added to record December 12, 2012)

The petitioner submitted background information relating to controversial Maricopa County Sheriff [redacted] and allegations of civil rights violations by his department. Counsel contended that the petitioner's efforts led to action on these allegations, but the submitted evidence on the subject does not mention the petitioner at all, let alone establish his role in the controversy.

The director denied the petition on August 28, 2012. The director acknowledged the petitioner's first, timely response to the RFE, but found that the petitioner failed to distinguish himself from other advocates by, for example, showing that his work has influenced others in his field. The director stated: "The record contains no evidence to show that other advocates are implementing the petitioner's proposals or strategies."

On appeal, counsel states: "Neither the regulations or existing case law require that an NIW applicant establish that his work has influenced others in his field. Regulations and case law require only that an NIW applicant prove that he has made a substantial contribution to his field." Counsel does not cite any specific "regulations [or] case law" in support of this position.

The USCIS regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F) refers to "Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations." Such evidence, however, does not establish eligibility for the national interest waiver. Rather, the six subclauses of the regulation at 8 C.F.R. § 204.5(k)(3)(ii) relate to exceptional ability in the sciences, the arts or business. The petitioner must meet at least three of the six specified standards in order to establish exceptional ability. Even then, exceptional ability is not, on its face, grounds for approving the national interest waiver. Under the plain wording of section 203(b)(2)(A) of the Act, aliens of exceptional ability are, generally, subject to the job offer requirement (which includes labor certification). Counsel offers no support for the claim that "[r]egulations and case law require only that an NIW applicant prove that he has made a substantial contribution to his field."

With respect to counsel's contention that "[n]either the regulations or existing case law require that an NIW applicant establish that his work has influenced others in his field," *NYSDOT* requires "a past history of demonstrable achievement with some degree of influence on the field as a whole." *Id.* at 219 n.6. Furthermore, counsel previously stated: "The services [the petitioner] will be rendering may be local, but because his directorship will serve as the model for other Mi Familia Vota locations in the Southwest, their impact will be national in scope." Thus, the waiver application rests on the claim that the petitioner's work will "serve as [a] model" for others to follow. The petitioner has already held a state directorship at MFV, and thus has already had the opportunity to establish a model program for others to implement. There is no evidence that the petitioner, having done more or less exactly the type of work he seeks to do in the future, has influenced others through the establishment of model programs. Therefore, there is little basis to conclude that such influence will appear in the future.

Counsel contends that the petitioner cannot obtain a labor certification because his skills "relate[] specifically to the field of ***Latino*** voter and civic engagement" (counsel's emphasis). Counsel does not cite any statute, regulation or case law to support or explain this assertion.

In a supplemental brief, counsel states:

> The Director's conclusion is predicated on the myopic assumption that an alien can show a substantial influence in his field only by establishing widespread citation of his work or methodology by his peers. The Director ignores that an alien can establish he stands out substantially from his peers in other practical ways that are more applicable to his field of endeavor.

The director, in the denial notice, never mentioned "widespread citation" at all. Counsel asserts:

> While an alien's influence on his peers is one way to gauge his influence in the field, it is not the only way, nor is it necessarily the best way to distinguish his influence as a whole. . . .
>
> The petitioner's specialty is an applied science rather than a theoretical one, and therefore, it is appropriate to judge his influence in the field to the extent that his advocacy work has measurably affected the political landscape and the Latino community.

As evidence of the petitioner's influence on "the political landscape and the Latino community," counsel cites various exhibits that predate the petitioner's work with voter participation groups and letters from Rep. Pastor and individuals who have worked with the petitioner. The AAO discussed these materials previously.

Counsel also quoted from letters and exhibits submitted with the June 28, 2012 attempt to supplement the RFE. Counsel states: "The Director's decision inexplicably failed to acknowledge, let alone mention, these crucial pieces of evidence in his decision." The omission of the second RFE response is not inexplicable as counsel claims. As explained previously, the regulations at 8 C.F.R. §§ 103.2(b)(8)(iv) and (11) do not permit the petitioner to supplement a prior RFE response or to submit materials after the specified response period has elapsed. The director's evident refusal to consider an untimely and unacceptable submission does not constitute adjudicative error. Because the above regulations support the exclusion of the late submission from consideration, the director properly did not discuss this untimely and impermissible submission in the denial notice.

Counsel concludes by stating:

> The evidence on the record clearly demonstrates that the petitioner has not only played a critical role in a field of national importance, and that he has indeed made substantial contributions using skills not normally encountered in his profession, but

> the evidence also clearly establishes that the petitioner's contributions go beyond the substantial *prospective* national benefit required of all aliens seeking classification as "exceptional."

The petitioner's past record includes work with a variety of organizations, including labor unions and community projects. The offered justification for the national interest waiver, however, specifically concerns voter participation work. Within that specialized area, the properly submitted evidence that the regulations permitted the director to accept contained little to distinguish the petitioner from his peers.

The record establishes that the petitioner is a dedicated organizer who has earned the respect of co-workers and employers. It does not show, however, that the petitioner's past work with MFV justifies projections of future benefit that would warrant approval of the national interest waiver. The AAO will, therefore, affirm the director's decision and dismiss the appeal.

Review of the record reveals a further deficiency that, by itself, is another ground for denial of the petition. The AAO may identify additional grounds for denial beyond what the Service Center identified in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The petitioner has claimed eligibility as a member of the professions holding an advanced degree. The record shows that he holds a B.A. in Philosophy and an M.A. in Social and Organizational Psychology, both from the University of Chihuahua, Mexico. A credential evaluation indicates that these degrees are equivalent to their United States counterparts. The petitioner therefore holds an advanced degree. (The record repeatedly identifies the petitioner as a doctoral candidate at Arizona State University, but there is no evidence that he actually received a doctorate.)

Simply holding an advanced degree does not qualify the petitioner as a member of the professions holding an advanced degree. The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines a profession as one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. The petitioner's intended occupation is not listed in section 101(a)(32) of the Act, and therefore it only qualifies as a profession if entry into the occupation requires, at a minimum, a bachelor's degree.

The petitioner, on the Form I-140 petition, stated that his intended occupation has a Standard Occupational Classification (SOC) Code of 11-9151. According to O*NET Online, a web site operated on behalf of the U.S. Department of Labor, the SOC Code 11-9151 corresponds to "Social and Community Service Managers." A survey of employers indicated that 18% of such positions require a master's degree; 51% of positions require a bachelor's degree; and 10% require a high

school diploma or its equivalent.[2] Clearly, occupations classified as "Social and Community Service Managers" often, but not always, require a baccalaureate degree.

It may well be that the petitioner's intended position requires a bachelor's degree, but the record does not contain sufficient evidence to support such a finding. Therefore, the petitioner has not established that his occupation qualifies as a profession. This omission is, by itself, sufficient to prevent approval of the petition, and therefore it presents an additional ground for denial.

The AAO will dismiss the appeal for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.

[2] Source: http://www.onetonline.org/link/summary/11-9151.00 (excerpts added to record December 12, 2012).